IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2789 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJUMIYA HANIF SAIYED THRO' WIFE SAMIMBANU RAJUMIYA SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR RJ GOSWAMI for Petitioner

MR ST DAVE, A.G.P. for Respondent No. 1, 4

MS DEVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/06/2000

ORAL JUDGEMENT

#. Present petitioner detenue Rajumiya Hanif Saiyed, has been detained under the provision of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 by an order dated 8.2.2000 passed

by District Magistrate, Ahmedabad under Section 3 (2) of the said Act and in pursuant to that, the petitioner has been detained and sent to Porbandar Jail, Dist. Porbandar.

#. The grounds of detention indicate that, during inspection, the petitioner was found to be indulging in the activity of solvent thereby adversely affecting the supply of essential commodities and therefore, the detaining authority came to conclusion that he is required to be detained under the provisions of the PBM Act in order to prevent him from continuing such activities.

#. The petitioner has challenged the order of detention on various grounds, the main ground is delay in considering the representation by the Central Government as well as the State Government and also on the ground of non application of mind by the authority. It is contended in para-11 of petition by the petitioner that the District Magistrate, Ahmedabad had passed detention order on 8.2.2000 and representation was made by the petitioner to the Secretary, Food & Supply Department, Union of India on 18.2.2000 and thereafter also additional ground in consonance with the representation was also sent to the said authority on 22.3.2000. But same has not been considered by the authority within reasonable time and there is unexplained delay in considering the representation.

It is further contended by the petitioner in the para-16 of the petition that he has also made the written representation to the Secretary, Food & Civil Supply Department, Gandhinagar on 18.2.2000, but the same has not been considered by the State Government within reasonable time. It has been held in a judgment delivered by this court in the case of. Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000 (1) G.L.H. as under :-

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend"' it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an

officer or authority other than the detaining authority".

Since no affidavit has been filed by any of the authorities, and the delay has not been satisfactorily explained by any of the authorities, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

#. The petition is allowed. The impugned order of detention dated 8.2.2000 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed. The detenu- Rajumiya Hanif Saiyed is set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

kks